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SUPREME COURT, U.S.

No. 80-5

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1980

RICHARD JOHN McCARTY, Appellant,

vs.

PATRICIA ANN McCARTY, Appellee.

ON APPEAL FROM THE COURT OF APPEAL
OF CALIFORNIA
FIRST APPELLATE DISTRICT

OPPOSITION TO MOTION FOR LEAVE TO FILE

AMICI CURIAE BRIEF IN SUPPORT OF APPELLEE

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Counsel for Appellant

January 8, 1981

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OPPOSITION TO MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF APPELLEE

Appellant Richard John McCarty opposes the motion for leave to file an amici curiae brief in behalf of the National Organization for Women Legal Defense and Education Fund, National Center on Women and Family Law, Women's Legal Defense Fund, Older Women's League, Action for Former Military Wives, California Women Lawyers, Women Lawyers' Association of Los Angeles, Queen's Bench of San Francisco, Women Lawyers of Northern Santa Barbara County.

Appellant has consented to the filing of an amicus brief prepared by attorneys with the firm of Covington and Burling, Washington, D.C., in behalf of certain organizations representing military wives. Appellant has not consented to the filing of an additional amicus brief in behalf of organizations whose only connection with the subject matter of this litigation appears to be the biological coincidence that both the Appellee and the members of the amici organizations are female.

The respondent organizations appear with one exception to be womens' organizations involved in the law.*/ These organizations identify with the entire range of womens' problems and identify with the Appellee simply because she is female.

Respondents' amicus brief in large measure argues social policy concerns as if this were a sex discrimination case -- which it is not. The respondent organizations present arguments which are better suited for legislative rather than judicial concern. In any event, their motion for leave to file does not "set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties, and their relevancy to the disposition of the case" -- all as required by Rule 36.3.

The submission of an amicus brief over the objection of a party litigant is not favored. Here, consent has been given to the filing of an amicus brief by those organizations whose members may be directly affected by the outcome of the decision in this dispute. There is in these circumstances no justifiable reason for further complicating the proceedings by allowing the filing of the amicus brief tendered by respondents.

The motion should be denied.

Dated: January 8, 1981

Respectfully submitted,

By: _____
Maxtaniah Eytan
KAPLAN, RUSSIN, VECCHI, EYTAN & COLLINS

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*/ The exception is Action for Former Military Wives, an organization that presumably represents spouses who might be directly affected by the decision in this case. But that organization already appears as an amicus in the brief filed with Appellant's consent by the attorneys from Covington & Burling. It is not proper to have the views of an amicus presented in two separate amicus briefs.

CERTIFICATE OF MAILING

The undersigned, at San Francisco, California, certifies to be true under penalty of perjury, that he is a citizen of the United States over 18 years of age and is not a party to the within action; that his business address is Fourth Floor, 332 Pine Street, San Francisco, California 94104; that he executed this certificate and served a true copy of the foregoing document by mail by placing same in an envelope, sealing, fully prepaying postage thereon and depositing said envelope in U.S. Mail at San Francisco, California on the 8th day of January, 1981; and that said envelopes were addressed as follows:

Gertrude D. Chern, Esq.
CHERN, BRENNEMAN & GARCIA
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Santa Maria CA 93456

Walter T. Winter, Esq.
100 Bush Street, 20th Floor
San Francisco CA 94104

Mattaniah Eytan

Subscribed and sworn to
before me this 8th day of
January, 1981.

OFFICIAL SEAL
CHARLES W BOWMAN
NOTARY PUBLIC - CALIFORNIA
SAN FRANCISCO COUNTY
My comm. expires JUN 29, 1984

Charles W Bowman
Notary Public